

STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS  
 Enoch Lemon, Jr.

FORM 4  
 JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-40-0824R  
 Richland County Sheriff's Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other, Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : Defendant's Motion to Enforce Settlement is Granted

**RECEIVED**  
 MAR 04 2015  
 SC Court of Appeals

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge ReHood Judge Code 2164 Date January 22, 2015

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of July, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of July, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Mary P. Miles

Robert Garfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

**SCANNED**

Rec'd 2/15/15

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Enoch Lemon, Jr.,

Plaintiff,

v.

Richland County  
Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-40-0824R

ORDER  
**RECEIVED**

MAR 04 2015

**SC Court of Appeals**

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C.C.P. 11  
RICHLAND COUNTY

This matter came before this Court by way of the Motion to Enforce Settlement on behalf of Defendant Richland County Sheriff's Department. A hearing on this motion was held on May 12, 2014 in Columbia, South Carolina. Present at the time and presenting oral arguments were counsel for Defendant Sheriff, Robert D. Garfield, Esq. and for Plaintiff, Mary P. Miles, Esq.

**I. RELEVANT BACKGROUND**

The background centers on a February 1, 2009 arrest in which Plaintiff was driving his Ford Expedition and stopped by a Richland County Sheriff's deputy. See, Complaint, ¶¶ 8, 9. The deputy charged Plaintiff with traffic-related offenses and transported to the Alvin S. Glenn Detention Center ("ASGDC"). Id., ¶¶ 9, 13. Plaintiff's negligence-based action centers on the inadequate placement and the improper and unnecessary manner in which the deputy maintained and held him in handcuffs. Id., ¶¶ 18-22. There is no claim for the sufficiency of the stop, arrest, or prosecution of Plaintiff. See, generally, Id.

At the instant motion hearing, the undisputed evidence revealed that mediation was conducted on March 4, 2014 in Columbia, South Carolina. The neutral was Don S. Rushing, Esq. Participants at the mediation included the following: Jennifer R. Purdy, Esq., counsel for Plaintiff; Enoch Lemon, Jr., Plaintiff; Robert D. Garfield, counsel for Defendant; Scott J. Hayes, Esq., staff attorney for Sheriff Lott; and Bradley T. Farrar, Esq., Elizabeth A. McLean, Esq., and Latitia D. Garnett, Esq., all of whom represented the Richland County Attorney's Office.

The time spent at mediation was 5.5 hours at which point there was a settlement was reached on the following terms:

- (a) *“Defendant shall pay and Plaintiff shall accept the sum of Eighteen Thousand and no/100 (\$18,000) Dollars in settlement of all claims arising out of the occurrence on February 1, 2009.”*
- (b) *“Plaintiff and Defendant, together with their, his, or its attorneys shall enter a confidentiality agreement as to the terms of the settlement.”*
- (c) *“Defendant shall pay all costs of the mediation to the mediator.”*

The aforementioned terms were memorialized in a document entitled, “Mediation Results (Settlement)” (hereinafter, “Agreement”) dated March 4, 2014. Plaintiff and counsel of record signed the Agreement, accepting all of the aforementioned terms. *See*, Rushing Aff., Exh. B.

On March 5, 2014, Ms. Purdy advised Mr. Garfield that Plaintiff, her client, desired to withdraw his acceptance and agreement to settle the matter. On March 17, 2014, Ms. Purdy was relieved as counsel by the Honorable L. Casey Manning, with the consent of Plaintiff. On March 19, 2014, Mr. Garfield filed the motion to enforce settlement.

## **II. RESPECTIVE POSITIONS OF PARTIES**

Plaintiff’s stated rationale for withdrawing his acceptance was the result of alleged duress on the part of Ms. Purdy occurring at the mediation. Plaintiff asserts that the Agreement was unfair and contained unfavorable provisions of which he did not approve. He never intended to release Defendant from liability for his claims and only executed the Agreement after he was threatened by Ms. Purdy. Subsequently and within a reasonable time, Plaintiff dismissed Ms. Purdy, rejected the settlement offer, and retained other legal representation.

As a basis in its motion, Defendant argues that at the time of mediation, the Agreement unambiguously set forth the terms of settlement. Moreover, the mediator specifically inquired of Plaintiff at the time of settlement whereupon Plaintiff willfully, intelligently, and knowingly agreed to same as set forth in the Agreement. Plaintiff signed the Agreement and accepting all of the salient terms. Moreover, Defendant avers that there was no evidence of coercion or any fraud in the inducement.

In support of his motion, Defendant submitted affidavits from the following two key participants: Affidavit of Jennifer Purdy, dated May 22, 2014 and Affidavit of Don S. Rushing, dated May 20, 2014. At the hearing, Plaintiff furnished this Court with oral testimony and Plaintiff’s counsel submitted a memorandum in opposition to Defendant’s motion. Defendant did not submit a memorandum.

### III. TESTIMONY OF THE PARTICIPANTS

#### A. Enoch Lemon

At the motion hearing, Plaintiff testified that, upon meeting Mr. Rushing, he advised Ms. Purdy that as to the following: (1) Mr. Rushing previously represented Defendant in another case in which Plaintiff was involved; (2) Plaintiff had a bad feeling about settling his case and that he did not want to resolve the matter; and (3) that he wanted to take his case to Court. Despite making Ms. Purdy aware of his position and preferences at the mediation, Ms. Purdy nonetheless advised him that she, Mr. Rushing, and Defendant's representatives had reached a settlement. Ms. Purdy further informed her client that if he did not agree to the settlement offer at that time, she would not represent Plaintiff at a trial on the matter. Following Ms. Purdy's remarks, Plaintiff alleges that he became "very confused" and was under duress to sign the Agreement.

#### B. Jennifer Purdy

In her Affidavit, Ms. Purdy attested that Plaintiff never expressed any concerns over the environment, the mediator, her representation, or the mediation process itself. *See, Purdy Aff.*, ¶ 5. Both she and her client were provided with a comfortable environment, a private conference room, a lunch buffet, and beverages throughout the day. *Id.*

Ms. Purdy states that prior to the mediation, she advised Plaintiff that Mr. Rushing would be the mediator. *Id.*, ¶ 6. Ms. Purdy was never aware of any purported conflict and Plaintiff never maintained any objections nor did he relay concerns to Ms. Purdy with respect to the selection of mediator. *Id.*

At the mediation, Ms. Purdy recalled that her client was introduced to Don Rushing and conversed with him for a period of time prior to the start of mediation. *Id.* Further, Ms. Purdy unequivocally states that at no time during the five and a half hours of proceedings had Plaintiff ever claimed as to having known Mr. Rushing. *Id.* At no time had Plaintiff relayed being uncomfortable, or otherwise express any kind of concern regarding Mr. Rushing due to an alleged prior representation of Defendant or any kind of conflict of interest. *Id.*

During mediation and as each new offer was relayed, Ms. Purdy and her client weighed the advantages and disadvantages of settling the case. *Id.*, ¶ 7. At some point, Mr. Rushing conveyed Defendant's final offer of settlement to both Ms. Purdy and Plaintiff. *Id.* Having then calculated her client's net recovery after attorney's fees, expenses, and payment of outstanding medical invoices, Plaintiff relayed the net recovery figure to Plaintiff. *Id.* Ms. Purdy again

considered the advantages and disadvantages to settling the matter and fully discussed same with her client in a private capacity and once again in the presence of Mr. Rushing. *Id.*

After such time, Ms. Purdy left him alone to contemplate settlement and further afforded Plaintiff an opportunity to make telephone calls so that he might privately discuss his decision with friends or family members. *Id.*, ¶ 9. Upon returning, Plaintiff advised Ms. Purdy that he wanted to settle. *Id.* Out of precaution, Ms. Purdy made repeated queries and Plaintiff confirmed his desire to settle the matter. *Id.* Plaintiff's decision was relayed to Mr. Rushing. *Id.* Mr. Rushing then asked Plaintiff if he was certain as to this decision and whether he understood that this would forever end his case. Mr. Lemon responded in the affirmative and Mr. Rushing drafted the Agreement. *Id.*

At the conclusion of the mediation, Plaintiff and Ms. Purdy departed together and conversed in the parking area. *Id.*, ¶ 12. They discussed the logistics and timing of receiving the settlement check. Plaintiff expressed his appreciation as to Ms. Purdy's work on his behalf and the two individuals never spoke again that day. *Id.*

### C. Don Rushing

Mr. Rushing's affidavit corroborated much of the particulars as averred in Ms. Purdy's statement. *See, generally*, Rushing Aff. Notably, that the Agreement set forth salient terms of settlement, was agreed upon by all parties and counsel, and, in his estimation, would expectedly be valid and enforceable. *Id.*, Exh. C. Moreover, Plaintiff expressly agreed to the conditions of settlement and signed the Agreement, accepting all of the stated terms. *Id.*, ¶ 4.

Mr. Rushing further indicated that he directly asked Plaintiff whether he "agreed to settlement amount, and was it what he wanted to do, (and) he said 'yes.' I (then) asked him if he needed to ask me anything about settlement and he said 'no.'" *Id.*, Exh. C. Having observed him throughout the mediation, Mr. Rushing was satisfied that Plaintiff understood what was going on at all times and formed the belief that Plaintiff knowingly and intelligently agreed to settle his case for a total of \$18,000.00 with the stated conditions in the Agreement. *Id.*

## III. ANALYSIS

Rule 43(k) of the South Carolina Rules of Civil Procedure provides the following (bolded for emphasis):

**(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless**

reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or *reduced to writing and signed by the parties and their counsel*. Settlement agreements shall be handled in accordance with Rule 41.1, SCRC.P.

*In Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 458 S.E.2d 533 (1995), the Supreme Court held that the purpose of Rule 43(k) is: “[T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself.” *Id.*, at 535. Moreover, “[t]he time of the court should not be taken up in controversial matters of this character.” (quoting 83 C.J.S. *Stipulation* § 4 (1953) (internal citations omitted); *see also, Motley v. Williams*, 647 S.E.2d 244, 246 (Ct.App.2007) (stating the application of Rule 43(k) will help avoid disputes regarding the terms of settlement).

Settlement agreements are reviewed by the circuit court in much the same way as contracts. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 643 S.E.2d 692, 695 (Ct.App.2007). When “an agreement is clear and capable of legal construction, the courts [sic] only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.” *Messer v. Messer*, 598 S.E.2d 310, 317 (Ct.App.2004). When an agreement is plain and unambiguous, the court does not have the authority to modify its terms. *Patricia Grand Hotel*, 643 S.E.2d at 695. “However, where ‘the language of a settlement agreement is susceptible of more than one interpretation, it is the duty of the court to ascertain the intentions of the parties.’” *Id.* (quoting *Mattox v. Cassady*, 344 S.E.2d 620, 622 (Ct.App.1986)).

This Court recognizes that the Agreement in this matter is in writing and clear and capable of legal construction. Therefore, this Court’s sole function is to interpret its lawful meaning and the parties’ intent as manifested in the Agreement. This Court finds that the Agreement contains plain and unambiguous language which conspicuously reflects the terms of the settlement. Accordingly, this Court does not have the authority to modify its terms. However, Plaintiff’s argument is that he did not intend to settle the case at the mediation, and by extension, did not sign the Agreement with that intention in mind. Given the clear and express language of the document, the Court finds that it is not susceptible of more than one interpretation. Consequently, it is not incumbent on the court to ascertain Plaintiff’s intentions.

Plaintiff also claims that there was no meeting of the minds and thus no enforceable contract for the Court to enforce.

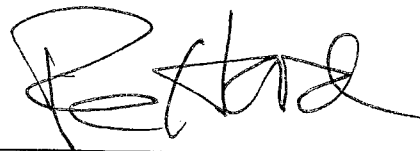
“South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 382 S.E.2d 891, 893 (1989); *see also, Potomac Leasing Co. v. Otts Mkt., Inc.*, 358 S.E.2d 154, 156 (Ct.App.1987) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.”) In *Player, Supra*, at 894, the South Carolina Supreme Court held:

The “meeting of minds” required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

This Court views Plaintiff’s assertion that he did not consent to settlement clearly contradicted by the Agreement signed by Plaintiff. This Court is unpersuaded by Plaintiff’s unsubstantiated contention that he was threatened by his attorney to sign the Agreement. Similarly, this Court does not believe that Plaintiff was either confused, under duress, unduly influenced or otherwise forced into settlement. If Plaintiff had alternatively maintained some secret dissatisfaction of the process and had not brought this to anyone’s attention, such does not serve to rescind a “meeting of the minds” as addressed in *Player*. Therefore, all facts and circumstances before this Court strongly bear that Plaintiff’s purpose and intention was to voluntarily and knowingly settle the case in conformity with the terms of the Agreement.

**IT IS THEREFORE ORDERED** that Defendant’s Motion to Enforce Settlement is **GRANTED** and that the instant matter be settled according to the terms and conditions of the “Mediation Results (Settlement)” dated March 4, 2014.

**IT IS SO ORDERED.**



\_\_\_\_\_  
The Honorable Robert E. Hood  
Circuit Court Judge

January 22, 2015  
Columbia, South Carolina